

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT L. WORLEY,	§
	§ No. 636, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0812010097
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 25, 2011

Decided: April 12, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 12th day of April 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Robert L. Worley, filed an appeal from the Superior Court’s September 23, 2010 violation of probation (“VOP”) sentencing order. For the reasons that follow, this matter will be remanded to the Superior Court for modification of its VOP sentencing order in accordance herewith.

(2) The record before us reflects that, in January 2009, Worley pleaded guilty to Assault in the Second Degree and Assault in the Third Degree. He was sentenced on March 13, 2009. On the first assault

conviction, he was sentenced to 6 years at Level V, to be suspended after 1 year for 3 years of Level IV Halfway House, in turn to be suspended after 6 months for 2 years at Level III probation. On the second assault conviction, he was sentenced to 6 months at Level V, to be suspended after 1 month for 5 months of Level III probation, concurrent with the probationary portion of his sentence for his first assault conviction.

(3) In September 2010, Worley was found to have committed a VOP with respect to both of his sentences for assault. He was discharged as unimproved as to the VOP on his third degree assault sentence. As to the VOP on his second degree assault sentence, the Superior Court re-sentenced Worley to 6 years at Level V, to be suspended after 1 year for 6 months at Level IV, with no probation to follow, thereby re-imposing his original Level V sentence.

(4) In this appeal, Worley claims that his VOP sentence for second degree assault did not properly take account of the 1 year of Level V time he served on his original sentence.

(5) When a defendant is found to have committed a VOP, the Superior Court is authorized to reimpose any previously suspended Level V term.¹ Likewise, when a defendant has actually served time at Level V, he is

¹ *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999); Del. Code Ann. tit. 11, §4334(c).

entitled to credit for that time when further incarceration at Level V is imposed after a VOP.²

(6) In this case, the Superior Court's VOP sentencing order does not, on its face, give credit to Worley for the year he spent at Level V on his original sentence---that is, it re-imposes a 6-year Level V sentence, 1 year of which Worley has already served. The State argues, perhaps correctly, that, in the particular circumstances of this case, the form of the sentencing order will not ultimately result in Worley serving more Level V time than was imposed in his original sentencing order. However, we conclude that, in the interest of clarity, this matter must be remanded to the Superior Court for modification of its September 23, 2010 sentencing order to explicitly give Worley credit for all Level V time he has served, in a manner that reflects the original intent of the sentencing judge.

NOW, THEREFORE, IT IS ORDERED that this matter is remanded to the Superior Court for further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

² Id.